

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**KIMBERLY FRYE**

**RESPONDENT,**

**v.  
SPEEDWAY CHEVROLET CADILLAC,  
ET AL.**

**APPELLANTS.**

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DOCKET NUMBER WD71757

DATE: August 10, 2010

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Appeal From:

Johnson County Circuit Court  
The Honorable Jacqueline A. Cook, Judge

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Appellate Judges:

Division One: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin,  
Judges

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Attorneys:

Charles K. Baldwin, Liberty, MO, for respondent.

Kevin D. Case and David J. Roberts, Kansas City, MO, for appellants.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**KIMBERLY FRYE,**

**RESPONDENT,**

**v.**

**SPEEDWAY CHEVROLET CADILLAC,  
ET AL.,**

**APPELLANTS.**

No. WD71757

Johnson County

Before Division One Judges: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Speedway Chevrolet Cadillac, Inc., Daniel F. Ladd (the President of Speedway), and Brice Ackerman (the General Sales Manager of Speedway), appeal from the trial court's order denying their motion to compel arbitration of Kimberly Frye's employment related claims. The Defendants contend that a dispute resolution program adopted by Speedway after Kimberly Frye began employment is an enforceable contract.

**AFFIRMED.**

**Division One holds:**

Speedway's arbitration agreement is not an enforceable contract pursuant to Missouri substantive law as it was not supported by adequate consideration.

Speedway's promise to continue Kimberly Frye's at-will employment was not sufficient consideration to create a valid agreement to arbitrate.

Though Speedway claims that it mutually promised to submit its claims against employees to the arbitration agreement, the language of the arbitration program does not support this contention. At best, the arbitration agreement bound Speedway to accept the outcome of dispute resolution of employee claims. An employer's mere promise to be bound by the disposition of employee claims through a dispute resolution program mandated by the employer is of suspect value to an employee, and likely fails to qualify as "bargained for consideration."

Even if Speedway's mere promise to be bound by the resolution of employee disputes could be viewed as adequate consideration, Speedway's promise was rendered illusory because Speedway reserved an overly broad right to unilaterally modify the arbitration agreement. The arbitration agreement arguably limited Speedway's right to amend such that amendments could only be applied prospectively to employee disputes about which Speedway did not have actual knowledge. However, that limitation was not sufficient to prevent Speedway's promise to be bound by the agreement from being rendered illusory, particularly where Speedway had no obligation to provide employees with advance notice of the amendment.

In any event, Speedway waived its right to enforce the arbitration agreement. Speedway had knowledge of its claimed right to arbitrate. Speedway acted inconsistently with that right when it engaged in trial oriented activities prior to seeking to enforce its alleged right to arbitrate. Kimberly was prejudiced by Speedway's trial-oriented activities as they materially delayed the disposition of her claims and forced her to incur unnecessary attorney's fees and other litigation expenses.

**Opinion by: Cynthia L. Martin, Judge**

August 10, 2010

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